IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 53 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANAND NAGAR PANCHAYAT

Versus

THAKKAR DILIPKUMAR GANPATLAL

Appearance:

MR PK JANI for the Petitioner

MR MC BHATT for Respondent No. 1

MR VM PANCHOLI APP for Respondent No. 3, 4

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 08/12/2000

ORAL JUDGEMENT

Heard the learned counsel for the respective parties.

2. The petitioner herein is the Sanand Nagar Panchayat. They filed a criminal complaint [Criminal

case no. 772 of 1990] in the Court of the learned Judicial Magistrate, First Class, Sanand against the respondent nos. 1 & 2 under section 93 (1) and 93 (4) of the Gujarat Panchayats Act. The respondent nos. 1 & 2 made an application for stay of the said criminal case on the ground that a civil dispute with respect to the subject matter was pending. Learned Magistrate allowed the application and ordered criminal proceedings to be stayed till the final decision in civil proceedings which were pending. The Panchayat has, therefore, filed this Special Criminal Application under Article 227 of the Constitution challenging the said order of the learned Magistrate.

3. It appears that attention of the learned Magistrate was not drawn to the decision of this Court in the case of Kiritkumar Mohanlal Shah v. State of Gujarat & Ors., 18 GLR 218 in which the following principles have been laid down :-

`[i] As between a civil suit and a criminal proceeding, criminal matters require to be accorded precedence.

[ii] The possibility of conflicting decisions in the Civil Suits on the one hand and the criminal proceedings on the other, is not a relevant consideration, inasmuch as the decision of one Court is not binding on the other or even relevant except for certain limited purposes, such as sentence or damages.

[iii] The only relevant consideration is the likelihood of embarassment to the accused person.

[iv] The Court with the question of stay of criminal case till the disposal of a civil suit must take into account the circumstances that a civil suit would drag on for a number of years and that it would be undesirable to stay a criminal case from two stand points. Firstly, public policy and public interests demand that criminal justice should be swift and sure and that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as possible

is consistent with a fair and impartial trial. Secondly, it is undesirable to let things slide till memories of witnesses have grown too dim to be trusted.

[v] No hard and fast rules can be laid down. And, nothwithstanding the aforesaid considerations, there might be peculiar circumstances which might justify special considerations on the fact pattern of an individual case. For example the civil case might be well near its conclusion and it might be more expedient and just to stay the criminal case.'

4. Mr. M.C Bhatt, learned counsel for the respondents no. 1 & 2 vehemently urged and submitted that the order of the learned Magistrate is legal and proper and the stay of the criminal trial should continue till the final disposal of the civil proceedings. However, it is obvious that, in the light of the said principles, there is no reason to stay the criminal trial since there were no peculiar circumstances which might justify special consideration on the fact pattern of the case.

5. The result is that the impugned order of the learned Magistrate cannot be sustained and is liable to set-aside. The petition is, therefore, allowed and the impugned order of the Judicial Magistrate, First Class, Sanand below Exh. 12 in Criminal Case No. 772 of 1990 is quashed and set-aside. The learned Magistrate shall proceed further in accordance with law. Rule made absolute accordingly.

[M.C Patel, J.]

Prakash*